

REMARKS

In response to the Office Action mailed on June 10, 2004, the Examiner withdrew claims 3, 5, 6 and 9-13 from consideration based on the election of Species I made during a telephone conversation on Wednesday, June 2, 2004. Applicant hereby affirms that election and has canceled Claims 3, 5, 6 and 9-13 without prejudice. The Examiner rejected Claims 2 and 8 as being indefinite. Applicant has canceled Claims 2 and 8. Applicant has also canceled without prejudice Claims 2, 4 and 7. This leaves only original Claim 1 and new Claims 14-18 for consideration.

The Examiner rejected Claim 1 as being obvious over U.S. Patent 5,309,669 to Jackson in view of U.S. Patent 5,211,317 to Diamond et al. and either U.S. Patent 5,817,293 to Akehurst et al. or U.S. Patent 5,765,601 to Wells et al. Applicant has amended Claim 1 to more clearly distinguish the present invention from the cited prior art.

Applicant has also added Claims 14-18. Claims 14-18 are modified versions of Claims 1, 2 and 5-7 from U.S. Patent Application 10/423,679 from which the present application claims priority. Claims 14-18 have been modified to overcome the most recent Office Action mailed regarding the prior patent application. Applicant is consolidating the two applications into the present application in order to simplify the prosecution process and save time and effort. Because the prior application is incorporated into the present application by reference, no new matter has been added. In addition, the added claims were rejected in the Office Action to the parent application based on the same prior art that is the basis for the rejections of the present application.

The claims from the parent application were rejected as being obvious Jackson in view of Diamond as was Claim 1 of the present application. All the other rejections in the present and parent application were directed towards claims that had been canceled. In response, Applicant has

modified new claim 14, based on Claim 1 of the parent application and Claim 1 of the present application to more clearly distinguish them from the prior art. Specifically, language has been added to explain that the method of the present invention uses air pressure to either crush an insect or other boring creature or to eject the animal from a bore in a tree using air pressure. Those skilled in the art will appreciate that a substantial amount of air pressure will crush an animal in a confined space. Similarly, if the space in which the animal is resting has more than one entrance, a substantial amount of air pressure applied to one of the entrances will cause the animal to be ejected from the other entrance. In many cases, substantially high air pressure will both eject an animal from a second entrance as well as literally blow it apart in the process.

The Jackson patent discloses inserting a nozzle into the empty space between walls of a building and releasing insecticide to kill insects hiding between walls. It does not disclose the use of air pressure to kill or remove insects. Rather, it contemplates killing insects using an insecticide. In the present invention, no insecticide is used. This is advantageous in that it does not leave toxic residue where it is used. In addition, the present invention is only useful in a relatively small space, such as a bore hole caused by an insect boring into a tree or similar structure. The relatively large space found between walls would not be suitable for the present invention. The air pressure required to crush insects within wall space would be too great for the walls to withstand. Were the present invention used in the same manner as that disclosed in Jackson, the building would suffer severe structural damage.

The other cited patents refer to various pressurized canisters. Applicant concedes that pressurized canisters are well known in the art. However, Applicant's invention, the method of utilizing pressurized gas to either crush or remove an insect or other vermin from a small bore is not

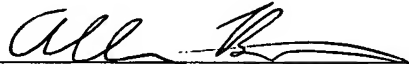
disclosed in any of the cited references. Applicant is not aware of any prior art that discloses utilizing pressurized air to either crush or push out animals from a bore. Applicant's invention releases no toxic chemicals into the bore or anywhere else. It is therefore very environmentally friendly. It does not harm desirable plants and animals as other insect killing or removing methods due.

For all the above reasons, Applicant now believes that the application should be in condition for allowance and such action is earnestly solicited. If, for some reason, any other issues remain, a telephone conference with the Examiner is respectfully requested.

Respectfully Submitted,

HEAD, JOHNSON & KACHIGIAN

Customer No. 24,118
Phone No. 918-587-2000

By: 
Allen F. Bennett, Reg. No. 50,199
228 West 17th Place
Tulsa, Oklahoma 74119
Attorneys for Applicant